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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,285	11/13/2003	Wamis Singhatat	ZL 0195	9330
23367	7590	11/24/2009		
GENE WARZECHA LINVATEC CORPORATION 11311 CONCEPT BOULEVARD LARGO, FL 33773			EXAMINER DÖRNBUSCH, DIANNE	
			ART UNIT	PAPER NUMBER
			3773	
			MAIL DATE	DELIVERY MODE
			11/24/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/712,285

Applicant(s)

SINGHATAT, WAMIS

Examiner

DIANNE DORNBUSCH

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 6-12, 15, 19, 21, 22 and 24-31 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 24-26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15, 19, 21 and 31 is/are allowed.
- 6) ☒ Claim(s) 1, 6-12 and 27 is/are rejected.
- 7) ☒ Claim(s) 28-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 6-12, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz et al. (US 6,293,961) in view of Smith (2003/0088272).

Claims 1, 10-12, and 27:

Sharwtz a suture anchor for insertion into a cylindrical bone hole to anchor a suture to bone, the suture anchor comprising a distal body portion (20) defining a longitudinal axis (Fig. 9), the distal body portion having a diameter sufficient to fit in said bone hole, being insertable into the bone hole and defining a radially outwardly projecting anchoring member (Fig. 9) operable to retain the suture anchor in the bone hole; and a proximal body portion (24) integrally formed with and extending longitudinally from the distal body portion (Fig. 9), the proximal body portion having opposed gripping portions (36, 37) moveable transversely between an open position and a closed position (Fig. 9), the gripping portions defining a transverse, suture receiving aperture (30) between them for receiving a transversely oriented section of at least one suture (the device is capable of holding a transverse suture directly at the gripping portion), the aperture being relatively larger and able to receive the suture, in two-way, free sliding relationship when the gripping portions are in the open position

(Fig. 9) and the aperture being relatively smaller and able to grip the suture in gripping relationship so the suture is prevented from moving in any direction when the gripping portions are in the closed position (in closed position the gripping members lock in place), the proximal body portion being responsive to insertion into the bone hole to move the gripping portions from the open to the closed position as the suture anchor is pushed into the bone hole, wherein the proximal body portion has a maximum transverse dimension in the open position (Fig. 9), the proximal body portion has a smaller maximum transverse position in the closed position (gripping portions lock together making a smaller position).

The examiner would like to note that the claim contains several statements that are intended use of the device, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Sharwtz discloses all the limitations discussed above, however I silent to the anchoring member having a maximum transverse dimension smaller than the maximum transverse dimension of the proximal body portion in the open position.

Smith discloses a suture anchor for insertion into a body tissue cylindrical bone hole to anchor a suture to the body tissue bone (Fig. 1 and [0003]), the suture anchor (16, 18) comprising: a distal body portion (15) defining a longitudinal axis (Fig. 2), the distal body portion having a diameter sufficient to fit in said bone hole (Fig. 1), being insertable into the body tissue bone hole and defining a radially outwardly projecting

anchoring member (distal portion of 2) operable to retain the suture anchor in the body tissue bone hole (Fig. 1 and [0049]); and a proximal body portion (26) integrally formed with and extending longitudinally from the distal body portion (Fig. 2 where it extends by legs 31 and 33), the proximal body portion having opposed gripping portions (40, 50) ([0050] first sentence, [0052]), and Fig. 2) moveable transversely between an open position (Fig. 2C) and a closed position (Fig. 1), the gripping portions defining a transverse suture receiving aperture (combination of 35 and 60) between them for receiving at least one transversely oriented suture (a portion of the suture is oriented transversely as seen in Fig. 2D, in addition the device is capable of holding a transverse suture directly at the gripping portion), the aperture being relatively larger and able to receive the suture (10) in two-way, free sliding relationship when the gripping portions are in the open position (Fig. 2) and the aperture being relatively smaller and able to grip the suture in gripping relationship when the gripping portions are in the closed position ([0052]-[0053] and [0056]), the proximal body portion being responsive to insertion into the bone hole (Fig. 1 and [0055]) to move the gripping portions from the open to the closed position as the suture anchor is pushed into the bone hole (Fig. 1 and [0055]-[0056]), wherein the proximal body portion has a maximum transverse dimension in the open position (Fig. 2C), the proximal body portion has a smaller maximum transverse position in the closed position (Fig. 1 since the legs (31 and 33) are compressed inside the bone), and the anchoring member has a maximum transverse dimension smaller than the maximum transverse dimension of the proximal

body portion in the open position (Fig. 1 and 2 where the proximal body portion ends at point 4 which is larger than 2).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Schwartz with anchoring member having a maximum transverse dimension smaller than the maximum transverse dimension of the proximal body portion in the open position such as the one taught by Smith in order to have anchoring extension at the proximal end of the proximal body to add extra support inside the bone.

Claim 6: Schwartz discloses that the proximal body portion includes at least one channel extending from the aperture to receive the suture in a recessed protected position (Fig. 9).

Claim 7: Schwartz that the anchoring member comprises at least one annular ring transverse to the longitudinal axis of the distal body portion (distal most portion of 20 is an annualr ring)) .

Claims 8 and 9: Schwartz discloses a locking mechanism (36 and 37 portions that lock into each other, also disclosed are multiple teeth and grooves, one set could be the gripping portions and another set the locking mechanism) that is integrally formed (Fig. 9).

Allowable Subject Matter

3. Claims 15, 19, 21, and 31 are allowed.

4. Claims 28-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is an examiner's statement of reasons for allowance: the art of record when considered alone or in combination neither renders obvious an improved suture anchor comprising, the combination an anchor body with a transverse suture receiving aperture with a locking mechanism and a gripping portion extending over and beyond the transverse aperture while the suture anchor is in an open position so the transversely oriented section of each suture is prevented from exiting the aperture longitudinally.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

6. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANNE DORNBUSCH whose telephone number is (571)270-3515. The examiner can normally be reached on Monday through Thursday 7:30 am to 5:00 pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. D./
Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773